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Local Government

Strengthening local government

SECTION 433 OF THE LOCAL GOVERNMENT ACT 1993

INVESTIGATION REPORT

**SECTION 430 INVESTIGATION
INTO UPPER HUNTER SHIRE COUNCIL**



JULY 2024

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REPORT OF THE SECTION 430 INVESTIGATION INTO UPPER HUNTER SHIRE COUNCIL

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EXECUTIVE SUMMARY

This is a report on the results of an investigation undertaken into Upper Hunter Shire Council (Council) by the NSW Office of Local Government, NSW Department of Planning, Housing and Infrastructure.

The investigation was undertaken in response to concerns about deterioration and subsequent failure of Merriwa/Willow Tree Road (also known as Coulson Creek Road and MR 358), following work undertaken by the council in 2019 to upgrade the road.

Council completed construction of the upgraded road in December 2019, but in March 2020 found it necessary to impose significant restrictions on its use due to concerns about the deteriorating condition of the road. In January 2021, Council determined that it was necessary to close the road to all traffic.

Council commissioned a review by an external engineer and undertook an internal investigation following the completion of the initial project. These identified multiple matters that were likely to have contributed to the failure of the project, including deficiencies in project management, the adequacy of the design documentation, and the way the construction was undertaken. Council has since undertaken significant work to get the road successfully rebuilt in accordance with a new design.

OLG's investigation found that Council now has the capacity and processes to ensure the successful rebuilding of MR 358. Council has obtained the needed capacity by outsourcing all critical elements of the rebuild. This was appropriate given Council's limited internal capacity and the need for assurance that the rebuild would be successful. Rigorous processes are being used to manage the reconstruction of the road.

The investigation also found that Council has adopted a new project management framework for capital and other projects that is based on, and incorporates, sound project principles and practices. Council's ongoing implementation, review and improvement of the adopted project management framework will be a key factor in ensuring it can successfully deliver capital works projects.

Council will face ongoing challenges in obtaining the necessary financial and human resources to support its delivery of capital works. The reasons for this are discussed in the report.

The report contains recommendations directed at further strengthening Council's governance of infrastructure delivery and its project management practices.

1 INTRODUCTION

1. This is a report to the Minister for Local Government, the Hon. Ron Hoenig MP on the results of an investigation undertaken pursuant to section 430 of the *Local Government Act 1993* (the Act) into Upper Hunter Shire Council (Council).
2. Section 433(2) of the Act provides that a report on results of an investigation undertaken pursuant to section 430 “*may comment on any matter that, in the Departmental Chief Executive’s opinion, warrants special mention and may contain such recommendations as the Departmental Chief Executive considers appropriate.*”
3. The initial section of this report provides details about the statutory framework governing the investigation, the terms of reference and the reasons for undertaking the investigation.
4. Section 2 of the report details the findings of the investigation.
5. Section 3 provides recommendations directed to improving how Council manages capital works.
6. Section 4 provides commentary on certain matters arising from the review of the evidence obtained during the investigation. It provides additional context to inform an understanding of the findings and recommendations.

1.1 Power to undertake the investigation

7. Section 430 of the Act provides that the Departmental Chief Executive may conduct an investigation into any aspect of a council or of its work and activities.

1.2 Terms of reference

8. The terms of reference for the investigation were:¹

1 Whether Upper Hunter Shire Council has the current capacity and processes to ensure the successful rebuilding of MR 358, having particular regard to the findings and recommendations of any

¹ It should be noted these terms of reference were authorised following a review of the investigation that occurred in November 2023. See Section 1.5 of the report for further details. A copy of the original terms of reference has been provided as an annexure.

investigations, assessments or reviews of the failure of the initial MR 358 road project.

2. *Whether Upper Hunter Shire Council's project management framework for capital works is sufficient to ensure that those works are successfully completed.*
3. *Any other matter that arises directly from the principal investigation of the Council's work and activities set out in these terms of reference.*

1.3 Background to this investigation

9. The investigation was undertaken by the Office of Local Government (OLG) in response to concerns about deterioration and subsequent failure of Merriwa/Willow Tree Road (also known as Coulson Creek Road and MR358) following upgrade works undertaken by the council in 2019.
10. Council completed construction of the upgraded road in December 2019.
11. In March 2020, Council imposed a 5-tonne load limit on the road and limited access to a single lane, due to concerns about the deteriorating condition of the road.
12. In May 2020, Council commissioned a review of works that it had undertaken on MR358 against the requirements of design documentation and Transport for NSW specifications.
13. In June 2020, Council commenced an internal investigation that was informed by the findings of the aforementioned review. This investigation was completed in September 2020 and focused on the Council staff who had significant roles in the initial project.
14. In June 2020, the then Minister for Local Government received a complaint about the council and its work on the road.
15. In January 2021, Council determined that it was necessary to close the road to all traffic due to continuing cracking, which had extended beyond the centre line of the road.

16. Council instigated work to rebuild the road in September 2020 with the establishment of a new Project Control Group (PCG).²
17. In October 2020, Council, with guidance from the PCG, called for tenders for a new design for the road and subsequently called for tenders for its construction.
18. Council appointed a new General Manager in January 2021 and subsequently, a new Director, Infrastructure Services.
19. In December 2023, Council received confirmation of external funding to rebuild the road and contracted an external provider to undertake this work.
20. Council also engaged the services of Transport for NSW to manage the delivery of the project.
21. Reconstruction of the road using the external contractors commenced in February 2024.

1.4 The investigative process

22. OLG undertook preliminary enquiries following the receipt of an initial complaint. The enquiries involved seeking and obtaining information from Council about what had occurred, including details of an internal review it had undertaken, and the results of an external engineering audit.
23. On 17 December 2020, the then Deputy Secretary, Local Government, Planning and Policy, under delegation from the Secretary, Department of Planning, Industry and Environment determined that a section 430 investigation should be undertaken.
24. The initial focus of the investigation was to establish the reasons why the road failed.
25. Documents obtained from Council were reviewed, including the expert advice it had received following the failure of the road and details of an internal investigation.
26. These documents identified multiple factors that were likely to have contributed to the failure.

² Membership included representatives from Council, Transport for New South Wales, Infrastructure New South Wales and Public Works Advisory.

27. Council supplied a copy of their action plan (undated) developed to address the findings of its internal investigation.
28. OLG's investigation was delayed at various points due to the impact of the COVID-19 pandemic, staff shortages and competing priorities, and the ongoing unavailability of a former Council employee who had a significant role in the delivery of the initial project.
29. An internal review of the progress of the OLG investigation was undertaken in November 2023. It was determined that it would be appropriate to revise the terms of reference to focus on Council's current capacity and processes, rather than those which were in place over four years ago when the road failed.
30. This change was made to ensure the Council had taken the steps necessary to prevent a repetition of what had occurred.
31. This investigation has reviewed how the Council has approached the rebuilding of the road and compared this to what occurred with the original project. This has been done by reviewing documents, interviewing staff and from obtaining information from external stakeholders.
32. The investigation examined the governance framework that has been put in place for the rebuilding project.
33. The investigation has also examined Council's current project management framework (PMF) for capital works and assessed whether it is "fit for purpose" and how the council is applying it.

2 FINDINGS

2.1 Term of Reference 1

34. Council has the capacity and processes to ensure the successful rebuilding of MR 358.

2.2 Term of Reference 2

35. Council has adopted a project management framework for capital and other projects that is based on, and incorporates, sound project management principles and practices.

36. Council's ongoing implementation, review and improvement of the adopted project management framework will be a key factor in ensuring it can successfully deliver capital works projects.

2.3 Term of Reference 3

37. Council's successful delivery of capital works projects requires more than a sound project management framework, noting that it will face ongoing challenges in obtaining the necessary financial and human resources.

3 RECOMMENDATIONS

3.1 Recommendation 1

38. Council should review its governance framework for the rebuilding of MR 358 to provide more detail on the respective roles and responsibilities of the elected Council, its Infrastructure Services Committee and the key Council staff.

3.2 Recommendation 2

39. Council should amend its project management framework and practices to address the following matters:

- 2.1 Council may be required, or choose to, adopt a different approach to project management to that prescribed in the current PMF.
- 2.2 Establish the governance arrangements to apply when a different approach is to be used, to ensure that any variations are reviewed, and any related approvals/requirements are documented.
- 2.3 Ensure new and existing staff who undertake project management activities have the necessary knowledge, competencies and awareness to undertake their roles in accordance with Council's adopted project management framework.
- 2.4 Strengthen provisions to ensure required records are created and retained in accordance with the *State Records Act 1988* and Council's recording keeping policy and procedures.
- 2.5 Refine processes for risk-based classification of projects.

2.6 Review the use of Council templates for project management and incorporate Transport for NSW project management templates and resources where appropriate.

2.7 Incorporate a means of ensuring continuous improvement of the PMF.

3.3 Recommendation 3

40. Council should include the efficacy and application of its project management framework in its internal audit program within 12 months of the date of this report.

3.4 Recommendation 4

41. Council should review its governance framework for capital works within six months following the September 2024 council election.

4 COMMENTARY

42. This section of the report provides commentary on information and evidence obtained during the investigation. It is provided to inform an understanding of the findings and recommendations.

4.1 Factors that contributed to the failure of the initial project

43. The investigation has relied on the available documents to identify the matters that were considered likely to have contributed to the failure, which were in turn used as criteria to assess whether the council “has the current capacity and processes to ensure the successful rebuilding of MR 358”. (Term of Reference 1)

44. A review of the available documents, including the expert advice Council received following the failure of the road, and report of the results of an internal investigation, identified that it is likely that there were multiple factors that contributed to the failure of the initial project to upgrade MR358 including:

- Deficiencies in overall project management, governance and risk management
- The adequacy of the design documentation
- Project delivery
- The adequacy of the budget/resources allocated

45. While it is apparent that significant weather events were a factor that contributed to the failure of the road and its ultimate closure, the road, if built to the required standard and in accordance with a sound design, should not have failed due to such weather.

4.2 Council to ensure the successful rebuilding of MR 358

46. There is compelling evidence that Council has had regard to what occurred with the initial project and that it has taken action to ensure the successful rebuilding of MR358.

Governance Framework

47. The investigation examined whether Council had adopted a governance framework for the rebuild project that addressed the following:
- Overall responsibility/accountability for the successful delivery of the project (fit for purpose, on time, within budget)
 - Responsibilities for making key decisions regarding design and delivery
 - Technical/professional oversight of the project (particularly in the delivery phase)
 - Processes for day-to-day management of the project
48. The investigation identified that Council has outsourced the delivery of the project to the Daracon Group, the technical/professional oversight of the project to Public Works Advisory (PWA) and project management of the delivery phase to Transport for NSW.
49. The roles of those involved in delivering the rebuild project are set out in a governance framework, which was endorsed by Council in December 2023. The elements of this framework are set out in Figure 1 on the following page.
50. PWA and Transport for NSW are lead agencies for the delivery of infrastructure projects. Daracon has been accredited by the Transport for NSW to undertake works of this nature and was only engaged after a comprehensive tender assessment process which, included a “subject matter expert” from PWA.

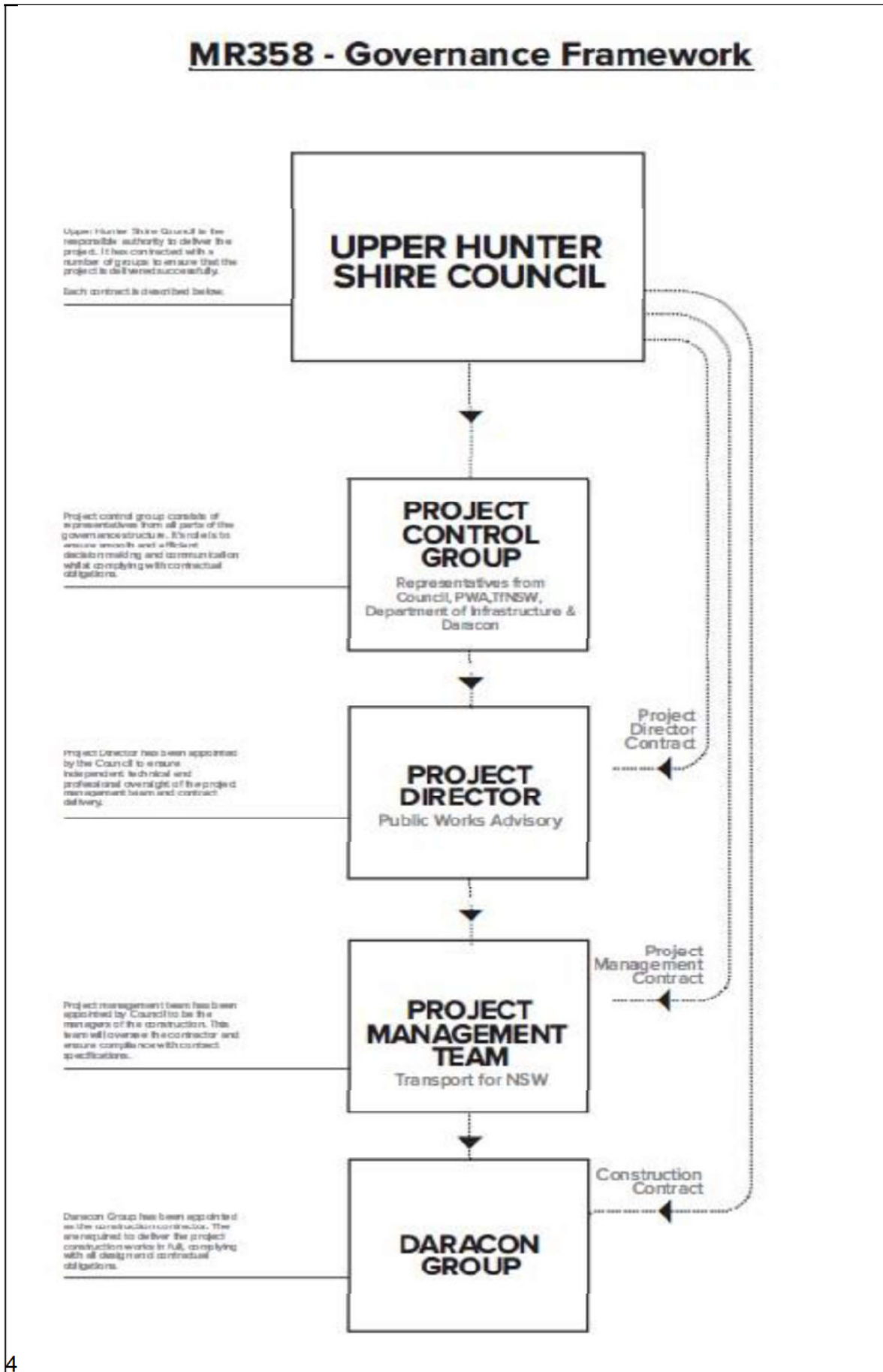


Figure 1: MR 358 Governance Framework

51. Finding 1, that Council has the capacity and processes to ensure the successful rebuilding of MR 358, is largely based on Council having obtained the required capacity by contracting others, who have the necessary knowledge, skills and experience.
52. The decision to acquire the capacity by “outsourcing” was appropriate given that it would have been at best, extremely challenging, if not impossible for Council to develop this capacity internally within a relatively short time frame.
53. The “outsourcing” approach is in stark contrast to the circumstances that prevailed when the initial project was planned and delivered, where Council itself was responsible for these matters and arguably, with the benefit of hindsight, did not have the capacity to undertake them effectively.
54. It should also be noted that the approach should help build Council’s internal capacity in the medium to long term, as its staff will be working with the contracted personnel and will be able learn from them.

Commentary on Recommendation 1

55. Council could potentially benefit from ensuring that the roles and responsibilities of the elected Council, its Infrastructure Services Committee and the Council staff (who continue to have a role in the ensuring the success of the project) are further documented as part of the governance arrangements.³
56. While there are details of these roles and responsibilities in various documents, these details are not readily ascertainable from a review of the published framework. The including of the further documentation will improve transparency, and potentially assist those involved with understanding what they are accountable for and will therefore further strengthen the framework.

Establishment of a new project control group

57. While there was a PCG for the initial project, it did not include external stakeholders, and as such, had less experience and expertise. There is also information that suggests that it met irregularly and ultimately was ineffective in exercising the necessary control that was needed.

³ In making this recommendation, it is noted that there is a Special Purpose Grant Funding Agreement in place which does stipulate specific roles for Council and the General Manager. Council can reference this when considering and responding to Recommendation 1.

58. One of the initial actions taken by Council to ensure the successful rebuilding of MR358 was to establish a new PCG.
59. The new PCG included subject matter experts from Transport for New South Wales, Infrastructure New South Wales, and PWA, as well as the necessary Council staff.
60. The current PCG group is meeting on a regular basis and appears to be effectively carrying out its role, based on how the project has progressed since it was established.⁴
61. The establishment of a new PCG and its ongoing operations, along with the contractual arrangements governing the outsourcing of the services/delivery referred to earlier, is significant evidence for the finding that Council now has the processes in place to support the successful delivery of the project.

Design documentation

62. The consulting engineer engaged by Council to review what had occurred during the initial project identified that deficiencies in design documentation was a factor that contributed to its failure.
63. The available information indicates that design documentation used for Stage 1 of the initial project lacked necessary details, and notes and it did not reference and incorporate appropriate RMS specifications.
64. Arguably, even more significantly, the consulting engineer found that Stage 2 of the initial project was undertaken without completed design documentation, which was still at preliminary/draft status even after completion of the project.
65. Council has taken the necessary action to ensure that the design documentation for the rebuild is sound.
66. Council called for tenders in October 2020 for the provision of detailed design and contract documentation for the reconstruction of MR358, having had the benefit of input from the new PCG.
67. As agreed with the PCG, Council used a selective tender process (invitation only). All prospective tenderers were required to attend a mandatory site

⁴ Several PCG meetings minutes were reviewed to gain an understanding of its operation.

inspection and briefing by consulting geotechnical engineers that had been engaged by Council.

68. The report on the assessment of the tenders was reviewed as part of this investigation. It indicates that the assessment process was directed to ensuring that Council received comprehensive documentation for the new project from a suitably qualified and experienced provider.
69. The Tender Evaluation Panel was chaired by a Senior Project Manager from PWA.

Preparation for the delivery phase

70. “Early Tenderer Involvement” (ETI) was included as part of the design process. This allowed pre-registered construction contractors to be involved in the design process, thereby helping ensure that they had a detailed understanding of the whole project.
71. The ETI process also had the advantage of allowing the final design to benefit from the contractors’ comments on the viability of what was being planned and gave them the opportunity to contribute innovative ideas based on their knowledge.
72. Council, having received the necessary design and contract documentation, was able to develop an adequate budget for the reconstruction, seek the necessary external funding, and to call for tenders for a provider to deliver the necessary construction works.

Selection of a suitable construction contractor

73. Council invited all organisations prequalified under the *Department of Finance, Services and Innovation Contractor Prequalification and Best Practice Accreditation Scheme* (R3-R4 works) to submit an Expression of Interest (EOI).
74. Council subsequently invited tenders for the works, which were advertised in Tenderlink on 16 December 2022. This was successful in eliciting two submissions.
75. As with the Design Tender, the report on the assessment of the tenders was reviewed. The assessment process appears to have been sound. As with the

Design Tender, Council utilised the expertise of a Senior Project Manager from PWA.

76. The tender evaluation panel concluded that the contract be awarded to the Daracon Group (Daracon Contractors Pty Ltd), and this is what subsequently occurred.

Review by external funding bodies

77. Council's capacity and processes to deliver the rebuild successfully has been subject to review by the external funding bodies who had to be satisfied on this before approving the required grants.⁵

78. The \$48.26 million dollar funding of the project is subject to the terms of a "Special Purpose Grant Funding Agreement" between Council and Transport for NSW. The agreement includes the following commitments:

1. *Ensure compliance with the State and Federal Government funding arrangements including the scope of the proposals submitted*
2. *Ensure opportunities to work cross functionally between programs (alternate funding sources etc) are taken up where relevant*
3. *The application of a standard of design to ensure the safest, most economic outcome for the road network, inclusive to the consideration of long term maintenance requirements;*
4. *Support the development and application of quality assurance (QA) and quality control (QC) procedures across the project to ensure agreed standards of road infrastructure are delivered in accordance with specifications set out within the design;*
5. *Application of performance monitoring and reporting schedules, focused on consistency and minimising administrative burden;*
6. *Ensure consultation and communication with stakeholders and the community is consistent between Council and TfNSW while focused on being as timely as possible.*

⁵ The Commonwealth Government committed \$38.6 million towards this project with the NSW Government contributing \$9.66 million.

79. The agreement provides for much more comprehensive external oversight than was the case for the original project. It requires the following from Council:
1. *Monthly reports, will be provided by the 15th working day each month, for the preceding month, covering all projects being developed and or under construction. Monthly Progress Reports submitted to TfNSW will include details of expenditure and progress towards agreed milestones, including any potential risks in development and or delivery of the program. These Reports will form the basis of agenda items for the monthly project control group (PCG) meetings.*
 2. *The monthly report will also identify financial performance reporting, including: expenditure to date with forecast monthly expenditure for the projects until project completion. Reports will denote any over/under expenditure and/or funding source for any co-contribution. All co-contributions are by way of approval from TfNSW. Reports will be in a uniform format as agreed with the parties once the Councils appointed Project Manager commences.*
 3. *A Post Completion Report (PCR) within six months of completion of the Project, unless otherwise agreed.*
80. The external funding that has been granted and the terms of the grant agreement are further evidence that indicates that Council has the processes to ensure the successful delivery of the project.

Status of project

81. As noted earlier, works to enable the construction of the rebuilt road commenced in February 2024. At the time of writing this report, the works are ahead of schedule.

4.3 Council's current project management framework

82. One of the improvement actions identified by Council following its internal investigation was to develop and implement "a best practice project management framework to be implemented across Council."⁶
83. While there may be conjecture as to what constitutes "best practice", there is evidence that indicates Council has adopted a PMF for capital and other

⁶ Council Action Plan – Action 1

projects that is based on, and incorporates, sound project management practices. (Finding 2)

84. Council's PMF is documented in a "Project Management Manual". Morrison Low was commissioned to prepare this manual for the Council. It has been in use since August 2021 and was revised in July 2022.

85. The purpose of the manual is clearly stated in the document:

The purpose of this manual is to record this Project Management Framework and to document the procedures and processes that apply to projects within Council. This will ensure all projects are planned and managed in a consistent, effective way and in accordance with good practice as well as Council policies and procedures.

86. The structure of the manual follows a logical sequence from initiation to completion, including planning, design and delivery.

87. The approach to project management set out in the manual clearly reflects the adoption of risk management principles. The PMF appropriately requires more comprehensive processes for projects that are assessed to be complex/high risk. This approach is directed to mitigation and management of risk, to maximise the likelihood of successful project outcomes.

Commentary on Recommendations 2.1 & 2.2

88. Council's PMF can be improved and amended over time to ensure that it supports the successful delivery of capital works and other projects.

89. Recommendations 2.1 and 2.2 deal with variations to the standard approaches to project management set out in the PMF.

90. Recommendation 2.1 is directed to recognising that Council may be required, or appropriately choose, to adopt a different approach to project management, to that prescribed in the PMF for a given project or class of projects. The recommendation is to amend its PMF to reflect this.

91. Recommendation 2.2 is directed to the documentation of the governance arrangements for such instances. This could be done by specifying certain classes of projects where a different approach will apply and/or the requirements for obtaining approval to adopt a different approach for a specific project.

92. Transport for NSW requires the Council to adopt a particular approach to project management for certain works that it pays the council to complete. Its requirements are different and more detailed to what would be required by the current version of the PMF for certain projects.
93. Given Transport for NSW is paying for its works, it is necessary for Council to adopt a different approach for these projects. This can easily be addressed by citing this class of contracts as an exception in the PMF.
94. Further, other external funding bodies may also stipulate different requirements and specific contracts/circumstances that may warrant a “non-standard” approach being used. Again, this scenario can be readily addressed by Council.
95. Where such different approaches do not expose Council to increased risk of adverse outcomes (in some cases they may even reduce such risks) and there is a net benefit to Council, it may not be unreasonable for a different approach to be adopted. This is what is understood to occur and given this, the scenario should be recognised by amending the PMF.
96. The PMF appropriately recognises that there are a range of criteria to ascertain the complexity and risk of a given project and provide a means of classifying projects as “Basic”, “Intermediate” or “Advanced”. While this is not unsound, Council has recognised that this classification and what flows from it can be further refined and set out in the PMF.
97. Council needs to ensure that in adopting any different approach, it ensures that the approach adopted is still sound and does not give rise to an unacceptable risk of project failure. A cautious approach should be adopted when considering any variations to the standard approach set out in the PMF.

Commentary on Recommendation 2.3

98. While the scope of the investigation did not extend to a comprehensive audit of how the PMF is being applied in practice, it did identify evidence that indicated that it isn't always being used consistently and as intended.
99. It was apparent from discussions with Council staff that any lack of application of the PMF as intended was more likely to be due to lack of awareness rather than any lack of willingness or inattention to the importance of the matter.

Council staff have demonstrated a willingness and desire to ensure the council delivers its projects successfully.

100. Recommendation 2.3 is directed at ensuring new and existing staff who undertake project management activities have the necessary knowledge, competencies, and awareness to undertake their roles in accordance with Council's adopted project management framework.
101. The rationale for the recommendation in relation to new staff is self-evident.
102. For existing staff, who have previously received training or briefings on the PMF, this rationale may be less clear.
103. The investigation obtained information that indicated that relevant staff have been made aware of the PMF and received training. However, the requirement for this is ongoing, particularly for those staff who may not be involved in project management on a regular basis but who may still be involved in applying the PMF from time to time.
104. The recommendation is not intended to be prescriptive in requiring Council to address it in a particular way for existing staff, such as by requiring further training. Rather, Council is encouraged to consider how it can achieve the desired outcomes of maintaining knowledge and awareness through a range of strategies including, but not limited to, briefings, inclusion in job descriptions and performance reviews.

Commentary on Recommendation 2.4

105. The investigation sought and reviewed documents pertaining to a sample of capital work projects to gain an understanding of Council's PMF and how it was being used.
106. Council acknowledged during the investigation that record keeping in relation to its capital works projects could be improved.
107. One of the matters identified was inconsistency in record keeping practices, particularly for smaller projects that do not have dedicated administrative resources that can be relied upon to ensure records are appropriately documented in Council's primary electronic document management system.⁷ (EDMS)

⁷ Council used "Content Manager" as its EDMS

108. Some smaller projects were found to have gaps in the record keeping, with some records being kept on other electronic databases outside of the EDMS.
109. Council should ensure that all necessary records are being created and retained in accordance with the *State Records Act 1988* and Council's recording keeping policy and procedures.
110. Requirements for projects are set out at a high level on pages (vi) and (vii) of Council's PMF. It is apparent the Council needs to take action to ensure it makes and retains sufficient records to demonstrate that these requirements are being complied with for relevant projects, noting what is required will vary depending on the complexity and risk profile of a given project.
111. For example, the PMF stipulates that there should be a "Project Closure and Handover Report" for all projects, regardless of the complexity or risk rating. Council needs to ensure that this report is prepared and retained on the relevant file. Council should be able to readily locate such reports as necessary, including for audit purposes.
112. Council should also review the adequacy of its internal controls/review processes, to ensure that there are checks in place to ensure the records are made and stored appropriately. In doing so, Council could consider how it might automate the use of templates and the associated making of records to improve consistency and compliance.

Commentary on Recommendation 2.5

113. The PMF appropriately recognises that there a range of criteria to ascertain the complexity and risk of a given project to provide a means of classifying projects as "Basic", "Intermediate" or "Advanced". While this is not unsound, Council has recognised that this classification and what flows from it can be refined and set out in the PMF.
114. While using a 3-level classification system offers the benefit of relative simplicity, it was understood from discussions with Council staff that it can lead to adoption of processes for certain projects that may not be necessary to ensure a successful project. It was suggested that is can occur because of the lack of refinement in the existing classification process.
115. Given Council has limited resources, it is important that these resources are targeted with maximum effectiveness, so the proposal to refine the

classification process is supported if it can ensure that only those actions necessary are undertaken.

116. In addressing this recommendation, Council should also consider the monetary thresholds that are used as part of the complexity/risk rating process, and adjust them from time to time, to ensure they reflect the impact of inflation.

Commentary on Recommendation 2.6

117. While Council uses a variety of templates in applying its PMF, as noted earlier, it could potentially benefit from automating the use of templates.
118. The Project Management Manual currently references the use of tools and templates, but these cannot be accessed directly by someone using the manual.
119. Council should consider producing an electronic version of the manual and incorporating links to the tools and templates.
120. Transport for NSW has very mature project management resources and has provided its templates and resources to the council. Council should make use of these templates where appropriate, particularly for its capital works projects.

Commentary on Recommendations 2.7

121. Recommendation 2.7 suggests that Council incorporate a means of ensuring continuous improvement of the PMF.
122. While Council's Project Management Manual provides that it will be "subject to regular revision", the process for this to occur is not clear, other than specifying that the authority to vary the manual lies with the Director, Infrastructure Services.
123. The recommendation that Council adopt a "continuous improvement" approach recognises that Council's project management practices can be refined over time as its staff apply the framework and learn what works best (and what is not working).
124. The current content of the Project Management Manual is somewhat generic in nature. While this is not a criticism *per se*, there is potential for it to be refined to meet Council's specific needs and circumstances.

125. Implicit in the continuous improvement recommendation is that Council should aim for small, regular, evidence-based changes, drawing on data and the experience of the staff using the system.

Commentary on Recommendation 3

126. It is important that Council's ensures that its PMF is effective and being used as intended, to minimise the waste, mismanagement and project failure.
127. Recommendation 3 is directed to having Council include project management in its internal audit program. This will give the council the assurance that it needs and/or identify further action that may be necessary.
128. The investigation (Term of Reference 2) was directed to examining whether Council's PMF framework for capital works is "fit for purpose". The investigation examined how the PMF was being applied to get a sound understanding of it. However, this examination was not an audit.
129. An internal audit will provide Council with a current and comprehensive assessment and should be undertaken once the other recommendations in this report have been actioned.

4.4 Resourcing challenges

130. It is important to acknowledge that Council faces an ongoing challenge in being able to recruit and retain the staff and contractors needed to implement its PMF.
131. These challenges can be attributed to the scarcity of suitably qualified persons, the competitive labour market for such persons and the impact of this on salary/contract costs, and Council's regional location. Council has also recently lost experienced personnel, and this may continue as Council's workforces ages and/or leaves to take up other opportunities.
132. It is apparent that Council is aware of these challenges and using its best endeavours to address these matters. For example, Council has adopted a practice of ensuring the budget for major grant funded projects includes a sufficient component to fund the engagement of a suitable project manager.
133. Council has also looked at redesigning and reclassifying positions to attract the right candidate.

4.5 Governance of capital works

134. The consideration of the terms of reference necessitated an examination of how Council governs the planning and delivery of capital works, more generally beyond the specific framework for MR358.
135. While the PMF is a key component of Council's capital works governance framework, it is not the only element. Other elements include the operation of Council's Infrastructure Services Committee (ISC), and the processes Council's General Manager uses to oversee the day-to-day operations.
136. Council has established an ISC comprised of four members of the elected council. It has a broad remit to consider the planning and delivery of capital works projects.
137. The ISC's Charter states that the objectives of this committee are:
- To consider strategic and operational matters of business within the Infrastructure Services directorate.*
- To ensure good governance and support responsible, transparent and effective decision making.*
- To ensure the community and all relevant stakeholders are given the opportunity to participate in the decision making process.*
138. A meeting of this committee was observed during the investigation and agenda and minutes of several meetings were reviewed.
139. It is apparent that the ISC provides useful feedback and direction to staff and that it also provides recommendations to the full council on related matters. It is also commendable for the transparency it provides by enabling interested councillors and community members to gain an understanding of the matters pertaining to the council's infrastructure and capital works.
140. However, it is also apparent that there are costs, particularly staff time, being incurred to support the committee's operations. The Charter stipulates that the Director, Infrastructure Services and four managers attend its meetings. It is also understood that the General Manager routinely attends along with associated administrative support.
141. It was noted that there is a clear overlap between the ISC's objective "*To consider ... operational matters*" and the statutory function of the General

Manager under section 335(a) of the Act, which provides that they are “to *conduct the day-to-day management of the council ...*”. Many councils do not have such a committee that deals with the operational aspects of infrastructure planning and delivery.

Commentary on Recommendation 4

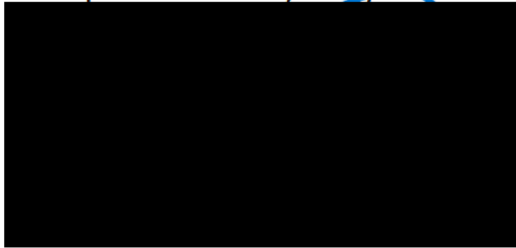
- 142. Recommendation 4 and the above commentary is, in part, intended to guide Council in its review of the role of ISC that will occur following the election of the new Council later this year. This review should have regard to related benefits and costs, the statutory functions of councillors and the general manager, and any possible alternative approaches put forward by staff. The recommendation should not be construed as a direction to abolish the committee.
- 143. The ambit of Recommendation 4 is also intended to go beyond a review of PMF and ISC.
- 144. As noted earlier, the governance of the capital works program clearly involves more than the operations of the ISC. Recommendation 4 has been framed broadly to recognise this.
- 145. In implementing this recommendation, Council may wish to examine the responsibilities and accountabilities of those staff who have a significant role in the project management of capital works and ensure that these are appropriately addressed in position descriptions, performance management and internal reporting arrangements.

4.6 Council’s willingness to improve

- 146. Council has, before and during the investigation, acted on its own motion to ensure that there is not a repeat of what occurred with the initial MR358 project. It has also taken action to improve its project management processes more generally.

5 SUBMISSION OF THE REPORT TO THE MINISTER

I hereby make this report to the Minister for Local Government, the Hon Ron Hoenig MP pursuant to my obligation to report on the results of the investigation.



Brett Whitworth
Deputy Secretary, Local Government
Department of Planning, Housing and Infrastructure

Dated this 15 day of July 2024

APPENDIX

Original Terms of reference

To investigate and report upon:

1. *The adequacy of decisions made by Council as to its capacity to successfully complete the MR 358 Road Upgrade Project within expected or required timeframes;*
2. *The causes of the road failure and the responsibility of Council officials for relevant acts or omissions;*
3. *The financial impact upon Council arising from road failure and required rectification works;*
4. *The adequacy of Council's project management frameworks for roadworks;*
5. *The supervision and performance of staff identified as being responsible for key aspects of the Project;*
6. *The accuracy and adequacy of reports to Council in respect of the status and progress of the Project;*
7. *The management of risks associated with any identified departures from engineering/industry standards and/or best practice with respect to the construction of the road and the management of the project; and*
8. *Any other matters that may be relevant, particularly in relation to the application process for, and administration of, grant funding for projects such as the MR 358 Upgrade.*